



**U.S. Department of Justice**

*Office of the United States Trustee*

*Districts of Kansas, New Mexico  
and Oklahoma*

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**GUIDELINES FOR CHAPTER 11 DEBTORS-IN-POSSESSION**

These Guidelines have been promulgated by the United States Trustee pursuant to her statutory duty to oversee and supervise the administration of bankruptcy cases. These Guidelines and reports are provided to every entity that files Chapter 11 in the District of Kansas. Because different reporting requirements and formats may be suitable for different types of cases, the United States Trustee has the discretion to modify the Guidelines, as she deems appropriate.

Failure to abide by these Guidelines (as modified, where applicable) will result in the United States Trustee filing appropriate motions with the Bankruptcy Court.

Federal Law provides criminal penalties for bankruptcy crimes, such as bribery, concealment of assets, false statements, false claims, filing under a fictitious name and perjury, of up to 5 years imprisonment or a fine of more than \$5,000 or both. 18 U.S.C. § 152.

**MARY E. MAY  
UNITED STATES TRUSTEE**

OFFICE OF THE UNITED STATES TRUSTEE  
DISTRICT OF KANSAS

1. GENERAL REQUIREMENTS

- A. The debtor is required to comply in all respects with the Bankruptcy Code and the Bankruptcy Rules.
- B. The debtor must pay all obligations arising after the filing of the petition ("post petition") in full when due. This includes not only general business expenses, but all post-petition obligations including but not limited to:
  - 1. wages
  - 2. FICA, both employees' and employers' share
  - 3. tax withheld from wages
  - 4. all other taxes
- C. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.
- D. The debtor shall file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court.
- E. Notices and copies of pleadings must be sent to the United States Trustee as required by Bankruptcy Rule 2002(k).

2. BANK ACCOUNTS - USE OF AUTHORIZED DEPOSITORY

- A. The debtor-in-possession must immediately establish a "debtor-in-possession" bank account. **The debtor is to close pre-petition accounts** and open new accounts in a depository which has agreed to comply with § 345 of the Bankruptcy Code and to comply with reporting requirements of the United States Trustee. All accounts used during the pendency of the case must be established in this manner.

- B. The debtor should deposit all receipts and make all disbursements through this account(s). Any funds in excess of that required for current operations should be maintained in an interest-bearing account.
- C. The debtor-in-possession account must be established in a bank included on the attached list; or the debtor's bank must sign and return the attached list of requirements to the Office of the United States Trustee. If the bank chooses not to comply, the estate funds must be deposited in a bank which will report to the United States Trustee. If reporting is not consistent with the requirements or if necessary collateral is not pledged, the United States Trustee will request that the bankruptcy estate's funds be moved to a complying institution.

### 3. INSURANCE REQUIREMENTS

- A. All debtors must maintain insurance and make all premium payments thereon when due.
- B. Unless the United States Trustee otherwise directs, the following types of insurance must be maintained.
  - 1. Casualty insurance - to cover tangible assets susceptible to casualty loss (fire, theft, vandalism, etc.)
  - 2. Workers' compensation insurance - if the debtor has employees.
  - 3. General liability - if the debtor conducts business operations.
  - 4. Product liability insurance - if appropriate.

### 4. INITIAL FILING REQUIREMENTS

- A. The debtor must comply fully with FRBP 1007. This rule requires the debtor to file schedules and a statement of financial affairs with the Clerk of the Court. Either the schedules or a complete list of all of your creditors (and their addresses) should be filed with your petition. Failure either to file your schedules and statement of affairs within fifteen (15) days of the date of filing or to obtain an order granting extension of time to file may

result in our office filing a motion to dismiss or convert your case.

- B. Pursuant to FRBP 1007(d), you must file a list containing the name, address, phone number and amount of claim of your twenty largest unsecured creditors. This list should not contain the names of any creditors who are "insiders" as that term is defined in § 101(31) of the Bankruptcy Code.
- C. The Initial Financial Report and Affidavit is attached and must be filed with this office within fifteen (15) days of the date of this letter. All items must be completed and the information requested furnished to this office.
- D. Insurance verification can take the form of copies of binders, face pages of policies, etc. Expiration dates and property insured must be provided with the report. We will contact the insurance agency directly for further verification. The copies of income tax returns should be complete copies of the federal and state returns for the two (2) most recent filing periods.

#### 5. CREDITORS MEETINGS

- A. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. Notice of the meeting date and time is sent to all creditors.
- B. A representative of the debtor as well as debtor's counsel, are required to attend. The debtor's representative must be someone knowledgeable about the debtor's affairs and able to act for the debtor. If a joint petition is filed, both debtors are required to attend.

#### 6. MONTHLY OPERATING REPORTS

- A. Every debtor-in-possession or trustee must file financial statements under penalty of perjury with the United States Trustee, the Bankruptcy Clerk's office and the creditors' committee.
- B. The report must be signed by the debtor(s), if individual(s); by an officer, if the debtor is a

corporation; or a general partner, if the debtor is a partnership.

- C. The report and attached statements are due for each calendar month period from time of filing the petition (first report will be for a short period) until the case is dismissed, converted or a plan is confirmed. The report is due the 15th of the month following the reporting period. (i.e. the June report is due July 15th.)
- D. The report must be prepared in accordance with generally accepted accounting principles. Attachments are provided to aid the debtor in filing the monthly reports. The enclosed format is to be utilized unless prior approval is obtained from this office.
- E. All items with the exception of the balance sheet and quarterly fees report, must be furnished monthly. These items may be submitted quarterly.
- F. The standard monthly operating report will consist of the following information: monthly report cover sheet, monthly reporting affidavit, income statement, receipts and disbursements statement, list of disbursements, bank reconciliation(s), copy of bank statement(s) and form 6123 when necessary.
- G. See instructions for further details and requirements of these reports.

7. COMPENSATION

Compensation or other benefits (e.g. use of automobile, insurance, meals, etc.) paid from the assets of the estate to the debtor; or if a partnership, to any of the partners; or if a corporation, to any officer, director or stockholder thereof, from the time of the filing of the petition until confirmation of a plan, must be reported to the United States Trustee and creditors' committee. An explanation for such compensation shall disclose the basis of such compensation or benefits and all income from any source for compensation for services related to the debtor proceeding.

8. CHANGES OR INTERRUPTIONS IN BUSINESS OPERATIONS

Any changes or interruptions in normal business operations must be reported to the United States Trustee and the creditors' committee immediately.

9. QUARTERLY FEES

- A. Pursuant to the provisions of 28 U.S.C. § 1930(a)(6), each debtor in a case pending under the provisions of Chapter 11 is responsible for paying a fee to the United States Trustee.
- B. Debtors are subject to payment of a quarterly fee for every quarter during which their case remains pending under Chapter 11. The obligation to pay any further fee ends when the Court enters an order of final decree in the case, dismissing the case, or converting the case. A plan must provide for payment of all unpaid quarterly fees as of its effective date or the United States Trustee will object to the plan.

The following language should be inserted in the plan of reorganization.

The reorganized debtor shall be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the reorganized debtor shall file with the Court and serve on the United States Trustee a quarterly disbursement report for each quarter, or portion thereof, until a Final Decree has been entered, or the case dismissed or converted to another chapter, in a format prescribed by and provided to the debtor by the United States Trustee.

Enclosed is a copy of the quarterly disbursement report that must be filed by the debtor after confirmation. The report will be due thirty (30) days from the end of each calendar quarter, post confirmation, until a final decree has been entered.

C. Fees are to be paid pursuant to the following schedule:

	<u>Quarter</u>	<u>Ending</u>	<u>Due Date</u>
1st Quarter	Jan-Feb-Mar	March 31	April 30
2nd Quarter	Apr-May-Jun	June 30	July 31
3rd Quarter	Jul-Aug-Sept	Sept 30	Oct 31
4th Quarter	Oct-Nov-Dec	Dec 31	Jan 31

D. The amount of the fee will vary based upon the amount of money disbursed by the debtor during a quarter. Disbursements include all payments made out of the bankruptcy estate including money paid to a secured creditor after a sale; even when those payments are made on behalf of the debtor by an escrow agent or third party.

E. The scale used to calculate the fee is as follows:

<u>Disbursement Category</u>	<u>Quarterly Fee Due</u>
Less than \$15,000.00	\$ 250
\$15,000.00 - \$74,999.99	\$ 500
\$75,000.00 - \$149,999.99	\$ 750
\$150,000.00 - \$224,999.99	\$ 1,250
\$225,000.00 - 299,999.99	\$ 1,500
\$300,000.00 - \$999,999.99	\$ 3,750
\$1,000,000.00 - \$1,999,999.99	\$ 5,000
\$2,000,000.00 - \$2,999,999.99	\$ 7,500
\$3,000,000.00 - \$4,999,999.99	\$ 8,000
\$5,000,000.00 and above	\$10,000

The debtor will receive a statement regarding the fee approximately two (2) weeks prior to each of the due dates noted above. (A copy of this completed statement is to be included as part of the monthly report for the month of payment.) Make the check payable to the United States Trustee. The payment should be returned to the following address:

**U.S. TRUSTEE PAYMENT CENTER  
PO BOX 198246  
ATLANTA, GEORGIA 30384**

**PENALTIES: FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CASE UNDER 11 U.S.C. § 1112(b)(10).**

## **NOTICE**

### **DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. § 1930(A)(6)**

**Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.**

**The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (4) engage private collection agencies to collect the debt, and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.**



## GUIDELINES FOR CHAPTER 11 DEBTORS-IN-POSSESSION

### Listing of authorized depositories for debtor-in-possession accounts

Intrust Bank  
PO Box One  
Wichita, Kansas 67201

Kansas State Bank  
126 North Main  
Ottawa, Kansas 66067

Mercantile Bank  
9900 West 87th Street  
Overland Park, Kansas 66212

United Bank  
PO Box 307  
Inman, Kansas 67546

When opening accounts, the banking institution should be shown and reminded of the reporting requirements for holding debtor-in-possession monies whether they have previously agreed to them or not.

In addition to the above listed institutions, a number of banks have agreed to report on an individual case basis only. If you have questions, please call the bankruptcy analyst assigned to your case for help. We will be happy to talk to your banker to clarify questions about requirements.